



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/22/05	Bill No:	AB 1290
Tax:	Water Rights Fee	Author:	La Malfa
Related Bills:	SB 31 (Florez)		

BILL SUMMARY

This bill would make the Water Rights Fees inoperative on the effective date of this measure.

ANALYSIS

Current Law

Among other things, Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code requires each person or entity who holds a permit or license to appropriate water, and each lessor of water, to pay an **annual fee** according to a fee schedule established by the State Water Resources Control Board (SWRCB).

Section 1529 requires each person or entity that files a Notice of Extraction and Diversion, as specified, to pay an **annual fee** according to a fee schedule established by the SWRCB.

Section 1537 requires the Board of Equalization (Board) to collect all **annual fees** and other fees referred by the SWRCB for collection. The fees are collected pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

The fees paid to the Board are deposited in the Water Rights Fund in the State Treasury.

Proposed Law

This bill provides that the fees authorized by Sections 1525, 1528, and 1529, and the fees that are authorized by Section 13160.1 that are required to be deposited in the Water Rights Fund, would remain in effect only until the effective date of this act.

This bill provides the Legislature's intent to finance programs that were funded prior to the effective date of the bill by the imposition of fees by appropriating funds from the Water Rights Fund that remain available for that purpose.

The bill would become effective January 1, 2006.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Background

The following is an excerpt from the Legislative Analyst's Office's "Analysis of the 2003-04 Budget Bill."

Water Rights Fee Structure Should Be Revised. Since water rights holders benefit directly from all aspects of the water rights program—including permit issuance and compliance monitoring—we conclude that the existing fee structure should be revised so that fee revenues replace all General Fund support budgeted for the board's program. These fees should also cover water-rights-related costs incurred by other state departments (such as DFG). To accomplish this, we recommend the enactment of legislation to (1) increase existing water rights application fees and (2) establish an *annual* water rights compliance fee. We further recommend that the Legislature enact legislation to establish a special fund for the deposit of these fee revenues, with expenditures from the fund subject to appropriation by the Legislature. By creating the special fund, the Legislature will be able to exercise oversight over the expenditure and use of the fees.

Finally, as a result of creating this new fee structure, we recommend that the General Fund in SWRCB's budget be reduced by \$7.2 million and the new special fund item be increased by a like amount.

The State Water Resources Control Board's water rights program is responsible for permitting and enforcing a subset of California's water rights. In the sections that follow, we discuss the current funding for the program, conclude that fees assessed on water rights holders should fully fund the board's water rights activities, and recommend legislation that would increase current application fees and establish ongoing compliance fees on water rights holders.

The SWRCB's Water Rights Program

The board's water rights program permits and enforces water rights established after 1914. The board assesses nominal one-time fees on water rights applications, but the General Fund primarily supports the program.

Water Rights Program Overview. The SWRCB's water rights program is responsible for (1) issuing new water rights for water bodies that have not already been fully "allocated" to water rights holders, (2) approving changes to existing water rights (this may be to facilitate a water transfer), and (3) conducting ongoing enforcement and compliance monitoring of water rights under its jurisdiction. The board's enforcement authority applies only to water rights established after 1914.

Water Rights Permitting Process. The water rights permits issued by the board specify the purpose of use, point of diversion, quantity, and other conditions that protect prior water rights holders, the public interest, and the environment. As part of the permit issuance process, the board publicly notices the permit application, allows for public comment, and conducts various environmental reviews as required by statute, including the California Environmental Quality Act (CEQA).

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Other state agencies, including the Department of Fish and Game (DFG), may also be involved in the environmental review process for water rights.

Licensing and Ongoing Enforcement Activities. After a water right has been granted and the terms of the permit have been established, the board will inspect the water project. Before a project can be licensed, all of the terms of the permit must be met and the largest volume of water under the permit must be put to beneficial use. This license represents the final confirmation of the water right and remains effective as long as its conditions are fulfilled and the water diverted continues to be used for a beneficial nonwasteful purpose. The board has authority to enforce the conditions of permits and licenses, and it does so by conducting inspections and investigating complaints about the water use behavior of water rights holders.

Fee Support Is Minimal. Currently, a one-time nominal application fee is assessed on all water rights applications, varying depending on the amount of the proposed diversion and/or storage. The minimum application fee is \$100. The current statutorily established fee schedule was last revised in the mid-1980s. These fees raise an insignificant amount of revenue—only about \$30,000—when compared to program expenditures of \$11.1 million in the current year. Applicants proposing large water diversions that are likely to have an impact on the environment pay for the preparation of any environmental documents required to comply with CEQA. However, the applicant does not cover the department's costs of reviewing these documents.

Budget Proposal. The budget proposes expenditures of \$8.7 million (\$7.2 million General Fund) to support the water rights program in 2003-04. This reflects the Governor's proposal to reduce the General Fund support for the program by \$3.3 million, a nearly 30 percent reduction in General Fund support. The vast majority of support for the program is proposed from the General Fund, with the balance coming from special funds, federal funds, and reimbursements (including fees). Fee revenues are estimated to cover less than 1 percent of program expenditures.

The 2003-04 budget actually included a \$3.6 million General Fund reduction to the SWRCB, which represents one half of a General Fund fiscal year reduction.

History

To implement the recommendation of the LAO to have the SWRCB fund itself through fees, the Committee on Budget and Fiscal Review introduced Senate Bill 1049 (Chapter 741, Statutes of 2003). Among other things, that bill repealed and added Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code to require each person or entity who holds a permit or license to appropriate water, and each lessor of water leased, to pay an annual fee. That bill also requires the Board to collect the annual fees and other fees referred by the SWRCB for collection.

In 2004, Assembly Member LaMalfa introduced Assembly Bill 2422, which would have repealed the water rights fees. That bill passed out of the Assembly Appropriations Committee without any further action.

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COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to repeal the new water rights fees and increases to fees that, according to the author, unfairly targeted agricultural ventures and individuals who had never previously been subject to any such fees.
2. **Suggested Technical Amendments.** It is suggested that language be added that would provide the Board and the SWRCB with the necessary authority, in keeping with their current duties, to 1) administer the current law as it existed solely for purposes of collecting water rights fees that became due prior to their repeal date, 2) deposit the water rights fees collected into the Water Rights Fund, 3) pay refunds of overpayments of fees, and 4) pay the costs of administration. Without such provisions, feepayers who had not paid water rights fees when due could not be held liable for those fees. At the same time, feepayers who had overpaid the water rights fees could not obtain a refund of overpayments of the fee and moneys in the Water Rights Fund could not be expended to pay the costs of administration of the fee. In addition, the bill should specify what would happen to the Water Rights Fund upon repeal of the current law.

Board staff is available to work with the author's office in drafting amendments to the bill that would address these issues.

3. **Pending litigation.** The Northern California Water Association and the California Farm Bureau Federation filed lawsuits against the Board and the SWRCB in December 2003 and April 2004, respectively. These parties seek a ruling that the fee imposed by SB 1049 (Ch. 741, Stats. 2003) is unconstitutional and invalid on its face (i.e., that the fee imposed is an illegal tax). The lawsuits have been consolidated and the matter is scheduled for trial in April 2005.
4. **Related legislation.** SB 31 (Florez) would, among other things, require the annual permit or license water rights fee to be imposed based upon the number of acre-feet of water covered by the permit or license, preclude the charging of duplicate annual permit or license fees to holders of multiple diversion or use licenses or permits, and place prescribed total annual revenue caps on the annual water rights fee.

COST ESTIMATE

Some costs would be incurred in informing the public and Board staff, processing final returns, corresponding with feepayers, and processing refund claims and billings for past periods. A detailed cost estimate is pending.

The Board's budgeted base for the Water Rights Fee program is \$444,000 for the 2004-05 fiscal year and \$361,000 for the 2005-06 fiscal year.

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REVENUE ESTIMATE

According to the 2005-06 Governor's Budget, revenues for the water rights fees are estimated to be \$10.707 for fiscal year 2004-05 and \$9.207 million in fiscal year 2005-06.

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